

House of Representatives, April 8, 1998. The Committee on Judiciary reported through REP. LAWLOR, 99th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE POWERS, DUTIES AND STATUS OF EMPLOYEES OF THE DEPARTMENT OF CORRECTION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (9) of section 53a-3
2 of the general statutes is repealed and the
3 following is substituted in lieu thereof:
4 (9) "Peace officer" means a member of the
5 Division of State Police within the Department of
6 Public Safety or an organized local police
7 department, a chief inspector or inspector in the
8 Division of Criminal Justice, a sheriff, deputy
9 sheriff or special deputy sheriff, a conservation
10 officer or special conservation officer, as
11 defined in section 26-5, a constable who performs
12 criminal law enforcement duties, a special
13 policeman appointed under section 29-18, 29-18a or
14 29-19, an adult probation officer, appointed under
15 section 54-104, [an official of the Department of
16 Correction authorized by the Commissioner of
17 Correction to make arrests in a correctional
18 institution or facility] ANY DESIGNATED EMPLOYEE
19 OF THE DEPARTMENT OF CORRECTION WHILE ACTING
20 WITHIN THE SCOPE OF HIS AUTHORITY, EXCEPT THAT
21 SUCH OFFICIAL SHALL NOT HAVE THE AUTHORITY TO MAKE
22 ARRESTS UNLESS SPECIFICALLY AUTHORIZED BY THE

23 COMMISSIONER OF CORRECTION, any investigator in
24 the investigations unit of the Office of the State
25 Treasurer or any special agent of the federal
26 government authorized to enforce the provisions of
27 Title 21 of the United States Code.

28 Sec. 2. Section 53a-22 of the general
29 statutes is repealed and the following is
30 substituted in lieu thereof:

31 (a) For purposes of this section, a
32 reasonable belief that a person has committed an
33 offense means a reasonable belief in facts or
34 circumstances which if true would in law
35 constitute an offense. If the believed facts or
36 circumstances would not in law constitute an
37 offense, an erroneous though not unreasonable
38 belief that the law is otherwise does not render
39 justifiable the use of physical force to make an
40 arrest or to prevent an escape from custody. A
41 peace officer or an authorized official of the
42 Department of Correction or the Board of Parole
43 who is effecting an arrest pursuant to a warrant
44 or preventing an escape from custody is justified
45 in using the physical force prescribed in
46 subsections (b) and (c) of this section unless
47 such warrant is invalid and is known by such
48 officer to be invalid.

49 (b) Except as provided in subsection (a) of
50 this section, a peace officer or authorized
51 official of the Department of Correction or the
52 Board of Parole is justified in using physical
53 force upon another person when and to the extent
54 that he reasonably believes such to be necessary
55 to: (1) Effect an arrest or prevent the escape
56 from custody of a person whom he reasonably
57 believes to have committed an offense, unless he
58 knows that the arrest or custody is unauthorized;
59 or (2) defend himself or a third person from the
60 use or imminent use of physical force while
61 effecting or attempting to effect an arrest or
62 while preventing or attempting to prevent an
63 escape.

64 (c) A peace officer or authorized official of
65 the Department of Correction or the Board of
66 Parole is justified in using deadly physical force
67 upon another person for the purposes specified in
68 subsection (b) of this section only when he
69 reasonably believes such to be necessary to: (1)
70 Defend himself or a third person from the use or

71 imminent use of deadly physical force; [or] (2)
72 effect an arrest or prevent the escape from
73 custody of a person whom he reasonably believes
74 has committed or attempted to commit a felony
75 which involved the infliction or threatened
76 infliction of serious physical injury and if,
77 where feasible, he has given warning of his intent
78 to use deadly physical force; OR (3) TO PREVENT
79 THE ESCAPE OF A PERSON FROM THE CUSTODY OF THE
80 COMMISSIONER OF CORRECTION WHEN SUCH OFFICER OR
81 OFFICIAL REASONABLY BELIEVES THAT THE PERSON
82 ESCAPING OR ATTEMPTING TO ESCAPE WILL COMMIT OR
83 ATTEMPT TO COMMIT AN ACT WHICH INVOLVES THE
84 INFLECTION OR THREATENED INFLECTION OF SERIOUS
85 PHYSICAL INJURY AND IF, WHERE FEASIBLE, HE HAS
86 GIVEN WARNING OF HIS INTENT TO USE DEADLY PHYSICAL
87 FORCE.

88 (d) Except as provided in subsection (e) of
89 this section, a person who has been directed by a
90 peace officer or authorized official of the
91 Department of Correction or the Board of Parole to
92 assist such peace officer or official to effect an
93 arrest or to prevent an escape from custody is
94 justified in using reasonable physical force when
95 and to the extent that he reasonably believes such
96 to be necessary to carry out such peace officer's
97 or official's direction.

98 (e) A person who has been directed to assist
99 a peace officer or authorized official of the
100 Department of Correction or the Board of Parole
101 under circumstances specified in subsection (d) of
102 this section may use deadly physical force to
103 effect an arrest or to prevent an escape from
104 custody only when: (1) He reasonably believes such
105 to be necessary to defend himself or a third
106 person from what he reasonably believes to be the
107 use or imminent use of deadly physical force; or
108 (2) he is directed or authorized by such peace
109 officer or official to use deadly physical force,
110 unless he knows that the peace officer or official
111 himself is not authorized to use deadly physical
112 force under the circumstances.

113 (f) A private person acting on his own
114 account is justified in using reasonable physical
115 force upon another person when and to the extent
116 that he reasonably believes such to be necessary
117 to effect an arrest or to prevent the escape from
118 custody of an arrested person whom he reasonably

119 believes to have committed an offense and who in
120 fact has committed such offense; but he is not
121 justified in using deadly physical force in such
122 circumstances, except in defense of person as
123 prescribed in section 53a-19.

124 Sec. 3. Section 53a-54b of the general
125 statutes is repealed and the following is
126 substituted in lieu thereof:

127 A person is guilty of a capital felony who is
128 convicted of any of the following: (1) Murder of a
129 member of the Division of State Police within the
130 Department of Public Safety or of any local police
131 department, a chief inspector or inspector in the
132 Division of Criminal Justice, a sheriff or deputy
133 sheriff, a constable who performs criminal law
134 enforcement duties, a special policeman appointed
135 under section 29-18, [an official of the
136 Department of Correction authorized by the
137 Commissioner of Correction to make arrests in a
138 correctional institution or facility] A MEMBER OF
139 THE DEPARTMENT OF CORRECTION, or any fireman,
140 while such victim was acting within the scope of
141 his duties; (2) murder committed by a defendant
142 who is hired to commit the same for pecuniary gain
143 or murder committed by one who is hired by the
144 defendant to commit the same for pecuniary gain;
145 (3) murder committed by one who has previously
146 been convicted of intentional murder or of murder
147 committed in the course of commission of a felony;
148 (4) murder committed by one who was, at the time
149 of commission of the murder, under sentence of
150 life imprisonment; (5) murder by a kidnapper of a
151 kidnapped person during the course of the
152 kidnapping or before such person is able to return
153 or be returned to safety; (6) the illegal sale,
154 for economic gain, of cocaine, heroin or methadone
155 to a person who dies as a direct result of the use
156 by him of such cocaine, heroin or methadone; (7)
157 murder committed in the course of the commission
158 of sexual assault in the first degree; (8) murder
159 of two or more persons at the same time or in the
160 course of a single transaction; or (9) murder of a
161 person under sixteen years of age.

162 Sec. 4. Section 31-51g of the general
163 statutes is repealed and the following is
164 substituted in lieu thereof:

165 (a) For the purposes of this section
166 "polygraph" means any mechanical or electrical

167 instrument or device of any type used or allegedly
168 used to examine, test or question individuals for
169 the purpose of determining truthfulness.

170 (b) (1) No person, firm, corporation,
171 association or the state or any political
172 subdivision thereof shall request or require any
173 prospective employee or any employee to submit to,
174 or take, a polygraph examination as a condition of
175 obtaining employment or of continuing employment
176 with such employer or dismiss or discipline in any
177 manner an employee for failing, refusing or
178 declining to submit to or take a polygraph
179 examination. (2) No employment agency, as defined
180 in section 31-129, and no agent for an employer
181 shall require any person to submit to, or take, a
182 polygraph examination for any purposes whatsoever.

183 (c) Any person, firm, corporation or
184 association which violates any provision of this
185 section shall be fined not less than two hundred
186 fifty dollars nor more than one thousand dollars
187 for each violation.

188 (d) The provisions of this section shall not
189 apply to (1) PROSPECTIVE EMPLOYEES OF THE
190 DEPARTMENT OF CORRECTION OR (2) persons to be
191 employed by the state or any local government or
192 any political subdivision thereof in any police
193 department except for civilian employees within
194 the department, but shall apply with respect to
195 obtaining and maintaining employment of other
196 persons by the state or any local government or
197 political subdivision thereof.

198 JUD COMMITTEE VOTE: YEA 36 NAY 1 JFS

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

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FISCAL IMPACT STATEMENT - BILL NUMBER sHB 5698

STATE IMPACT	Minimal Absorbable Costs, see explanation below
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MUNICIPAL IMPACT None

STATE AGENCY(S) Department of Correction

EXPLANATION OF ESTIMATES:

Passage of the bill modifies the definition of peace officer as it applies to Department of Correction (DOC) personnel and makes it a capitol felony to murder any DOC official. Finally, the bill authorizes the department to give lie detector tests to prospective employees. It is not anticipated that such test will be necessary or used for every applicant and therefore, passage of the bill would result in minimal costs which are absorbable within existing resources.

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OLR BILL ANALYSTS

SHB 5698

AN ACT CONCERNING THE POWERS, DUTIES AND STATUS OF
EMPLOYEES OF THE DEPARTMENT OF CORRECTION

SUMMARY: This bill alters the definition of peace officer as it applies to Department of Correction (DOC) personnel and specifies that it only applies to those acting within the scope of their authority. It restricts the occasions when a peace officer or DOC or Board of Parole official can use deadly force to prevent an escape from DOC custody to when the officer

believes the escapee will seriously harm someone.

The bill also makes it a capitol felony, punishable by the death penalty, to murder any DOC official or employee, not just one authorized to make arrests in a DOC facility. For this penalty to apply, the employee would have to have been acting within the scope of their duties.

Finally, the bill authorizes DOC to give lie detector tests to prospective employees.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION

Peace Officer Definition

Currently, the penal code defines peace officers to include DOC officials authorized by the commissioner to make arrests in department facilities. The bill changes this to any DOC-designated employee while he is acting within the scope of his authority. (It does not specify who is to designate the employees who are considered peace officers.) The bill also specifies that these designated officials have the power to make arrests only if the DOC commissioner authorizes them to do so.

Use of Deadly Physical Force

By law, peace officers and authorized DOC and parole officials can use deadly physical force only to (1) defend themselves or a third party or (2) make an arrest or prevent the escape of someone they believe has committed a felony involving serious physical injury or the threat of it. If possible they must give a warning of their intent to use deadly physical force. The bill specifies that when the use of such force is to prevent an escape from DOC custody, the official using it must reasonably believe that the person trying to escape will commit or attempt to commit serious physical injury. The official must still give the warning, if feasible.

Polygraph Test Exemption

By law, public and private entities may not require or request that prospective or current employees take a

lie detector test as a condition of obtaining or maintaining employment. This provision does not apply to state and local police employees, other than civilian employees. This bill allows DOC to require or request that prospective employees take such a test.

BACKGROUND

Peace Officers

A number of statutory provisions concern peace officers. For example, peace officers are justified in using physical force while preventing an escape and they may use deadly force in self-defense without having to retreat. A person may not use physical force to resist arrest by a reasonably identifiable peace officer. It is an offense to interfere with a peace officer and to fail to assist an officer in the execution of his duties when commanded to do so. Several crimes carry stiffer penalties when peace officers are involved. Assault of a peace officer is causing injury or attempting to cause injury to a reasonably identifiable peace officer while performing his duties. The statutes also make it a crime to kill an animal under the supervision of a peace officer. A peace officer need not have a permit to purchase or receive a pistol or revolver. Peace officers also have access to criminal record searches.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 36 Nay 1